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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,454	02/09/2004	Detlev Erich Gutberlet	GUTBERLET4	3615
1444	7590	07/26/2006	EXAMINER	
BROWDY AND NEIMARK, P.L.L.C.			WALCZAK, DAVID J	
624 NINTH STREET, NW			ART UNIT	
SUITE 300			PAPER NUMBER	
WASHINGTON, DC 20001-5303			3751	

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/773,454

Applicant(s)

GUTBERLET ET AL.

Examiner

David J. Walczak

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: On page 12, line 3, "threaded section 32" should be --threaded section 33--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 11-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regard to claims 11 and 15, the phrase "in particular to/on the container" (see line 14 of claim 11, and line 6 of claim 15) is indefinite in that it is not clear as to whether or not "the other part of the device" is intended to be the container, or a different part of the device. Clarification is needed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-13, 17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lacout et al. (hereinafter Lacout) in view of Dealge. In regard to

claims 11 and 17, Lacout discloses an applicator for a cosmetic (see column 1, lines 1-7) comprised of a container 3 for the cosmetic, a piston 6 and an operating mechanism 7, 12 for operating the piston wherein the operating mechanism is connected to another part of the device via a flexible interlocking device 12,15 wherein the interlocking device includes a flexible interlocking element 12 on the outer wall of the operating mechanism which is disposed in the vicinity of a wall weakening 34 of the operating mechanism (see column 4, lines 28-32). Although the Lacout device does not include a flocked applicator connected to the container via a supply channel, attention is directed to the Delage reference, which discloses another cosmetic applicator wherein a flocked applicator 130 (see column 4, lines 1-8) having a supply channel 131 is employed in order to enable a user to effectively apply a more liquid cosmetic, especially since the Lacout reference discloses that a more liquid cosmetic may be dispensed (see the paragraph bridging columns 3 and 4). Accordingly, it would have been obvious to one of ordinary skill in the art at time the invention was made to include such flocked applicator onto the Lacout device in order to enable a user to employ the device for applying a more liquid cosmetic. In regard to claim 12, the piston 6 includes an outer guide section of non-rotationally symmetrical cross-sectional shape which cooperates with a complementary inner guide surface on the container (see Figure 2 and column 3, lines 49-52). In regard to claim 13, the outer guide section of the piston is elliptical (see Figure 2). In regard to claim 19, the operating mechanism 7, 12 is connected and secured to the container (see Figure 1). In regard to claim 20, the operating mechanism

is rotatable about the axis of the piston and translation of the rotary motion of the operating mechanism into piston travel takes place via a "helical gear" 7,8.


Claims 14-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lacout in view of Delage as applied to claim 11 above, and further in view of Iaia '341 (hereinafter Iaia). The operating mechanism is rotatable about the axis of the piston and translation of the rotary motion of the operating mechanism into piston travel takes place via a "reversing gear" 7,8. Although the Lacout device does not disclose a locking device, attention is directed to the Iaia reference, which discloses an analogous dispensing device wherein a locking device comprised of a first locking unit having a rib 32 disposed on the operating mechanism and a second locking unit defined by a flexible tongue 64 (which is formed for deviation from the symmetry of rotation) disposed on the container in order to control the dosage being dispensed (see column 2, lines 34-37). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include such first and second locking units onto the operating mechanism and container of the Lacout device in order to enable a user to better control the dosage being dispensed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
7/11/06